

## **Indissolubility and Second Marriage – A New Way Out of the Impasse?**

**T**he German systematic theologian *Thomas Ruster* argues in this issue of the *INTAMS review* that the time has come for the Roman Catholic Church to give up on two central pieces of its teaching on Christian marriage. The first one is the assumption that marriage is a natural institution, established by the divine creator and subject to natural and divine laws, which remains the same in the face of changing historical and cultural contexts and as such also provides the inalienable bedrock and substrate for Christian sacramental marriage. The 1983 Code of Canon Law puts it this way: “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized” (can. 1055 §1). The second position contested by Ruster is what canonical and theological handbooks on marriage refer to as the “identity of contract and sacrament”. It has also been codified in the church’s marriage law and is expressed in the subsequent paragraph of the canon just quoted: “For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament” (can. 1055 §2).

Ruster’s critique of the second supposition is not so new and does not therefore come as a surprise. That baptized Christians cannot validly enter marriage without their consent being automatically a sacrament is a theological conclusion that did convince a majority of scholars from the Middle Ages up to modern times, but by far not all of them. Their reasons for dissent varied in the course of time – with some referring to scholastic reflections on what constitutes a sacrament while others argued on the basis of the theology of grace –, but they all in some way concurred in the conviction that to raise marriage to the dignity of a sacrament more is required than the juridical act of two consenting partners, that “more” being the explicit intention of the spouses to receive the sacrament or the sacramental blessing of the union by an officially mandated minister. Moreover, it is commonly assumed that the popes of the 19<sup>th</sup> century who inculcated the inseparability of contract and sacrament did so for political rather than theological reasons, namely to refute the modern states’ claim on civil marriage and to defend the church’s jurisdiction in matters of matrimony. In the more recent past the critique of an automatism which renders the marital vows of baptized partners *eo ipso* into a sacrament has again gained momentum, mainly because of the growing number of “nominal Christians” in western societies who according to the church’s position can only have sacramental or otherwise invalid marriages although they often have no idea of what the marital sacrament means, let alone consciously agree to or seek the sacramental character of their union. Renowned canonists like L. Örsy have therefore suggested that “the church needs to find some way of recognizing the natural marriages of baptized unbelievers” and that “[t]he possibility of such recognition would also open the way for a dignified refusal of the sacrament when a baptized person clearly professes unbelief” (L. ÖRSY: *Marriage in Canon*

*Law: Texts and Comments, Reflections and Questions*, Glazier: Collegeville, 1986, 270; cf. also S. DEMEL: *Kirchliche Trauung - unerläßliche Pflicht für die Ehe des katholischen Christen?*, Stuttgart etc.: Kohlhammer, 1993). They were backed by theologians who argued that “[m]arriage becomes a sacrament, not because of some juridical effect of baptism, but because of the active faith of the couple” so much so that “[t]hose who marry without active Christian faith, be they ever so baptized, marry also without Christian sacrament” (M.G. LAWLER: “Faith, Contract, and Sacrament in Christian Marriage”, in: M.G. LAWLER/W.P. ROBERTS [eds.]: *Christian Marriage and Family: Contemporary Theological and Pastoral Perspectives*, Collegeville: Liturgical Press, 1996, 46; cf. also the monograph by J.B. SEQUEIRA: *Tout mariage entre baptisés est-il nécessairement sacramentel? Étude historique, théologique et canonique sur le lien entre baptême et mariage*, Paris: Cerf, 1985). From a pastoral perspective as well, the separation between valid and sacramental marriages seemed to offer new possibilities for a marriage catechumenate in the course of which unbelieving couples could be invited to have a non-sacramental wedding ritual in church to be eventually followed, after an adequate initiation into the faith, by a full-fledged sacramental celebration (cf. H. DENIS [ed.]: *Le mariage, un sacrement pour les croyants?*, Paris: Cerf, <sup>2</sup>1990).

Ruster’s advance, however, does not aim first of all at addressing the case of unbelieving baptized couples and of sacramental practice. His intention is to provide a solution for the tricky issue of the remarried divorced people in the church. His suggestion is simple and straightforward: If the Church would distinguish between sacramental and non-sacramental marriages for baptized Christians, the way would be open to recognize second marriages after divorce as what they are perceived to be by those concerned and by most of their contemporaries: factual unions which may realize a higher or lower degree of moral integrity but which in any case would not fall into the realm of the Church’s teaching authority and normative moral judgement. In all this, the indissoluble character of the first marriage would be warranted since remarriage would in no way put into question, let alone dissolve, the previous marital bond. Ruster is uncompromising when it comes to defending the indissolubility of Christian marriage which he regards as the inalienable centre of Jesus’ teaching on marriage. Therefore he does not argue – as some other proponents of the separability of contract and sacrament have done before him – that marriages should be (regarded as) dissoluble when the spouses lack faith and thus an adequate disposition for the sacrament. The logic of annulment is for Ruster as questionable as the Church’s undifferentiated culpabilization of Christians whose marriages have failed on the human level. Both are the result of an inadequate approach to relational difficulties and failure since the Church is stuck between two unhealthy alternatives if the marriage has come to an end – either look for a defect at the time of its coming into existence or otherwise blame the couple for not living up to the demands of a union that is supposed to mirror Christ’s unfailing faithfulness toward the Church. Ruster does not hesitate to carry his line of argument as far as to imply that the indissolubility of Christian marriage is not a moral obligation that is either to be met or infringed upon but rather a simple matter of fact and reality. Because Christian marriage simply cannot be dissolved, a second marriage is by definition “something else”, a new relationship that simply does not compete with the first one and therefore should be accepted and recognized as such.

The reader of Ruster’s article will probably be left with a number of perplexing questions. Does asserting the indissolubility of Christian marriage in such a categorical way not amount to recuperating the idea of an ontological bond which mainstream post-Vatican II theology has replaced by, or at least reinterpreted in terms of, a personalist approach to the conjugal union? Will the clear distinction between sacramental and non-sacramental marriage not elevate Christian marriage to such a high ideal that only a small elite of Christian couples will be able to live up to its claims of sacramentality and indissolubility? And what if such

marriages break up as they obviously do? Will the persons concerned and the church community as a whole share the vision that a subsequent relationship would in no way impair the indissoluble character of the first marriage because they simply do not compare? Ruster has elaborated on these and other questions in much more detail in the German book which he has recently co-authored with his wife who works as a marriage counsellor (THOMAS & HEIDI RUSTER: *...bis dass der Tod euch scheidet? Die Unauflöslichkeit der Ehe und die wiederverheirateten Geschiedenen. Ein Lösungsvorschlag*, München: Kösel, 2013). It turns out here that the real “revolutionary” potential, as Ruster calls it himself, of his proposal lies in his denying of the Church’s teaching and moral authority over the “nature” of marriage, or to put it differently, over “natural marriage”. The theological hermeneutics which derives from this claim has a double effect: It allows Ruster on the one hand to have an ingenuous and unprejudiced view of the plurality of today’s living arrangements, of which second marriages are just one expression. The pure fact of that diversity and pluriformity is referred to as a compelling counterevidence against the traditional theological supposition that “natural marriage” has been established in creation as a normative framework for sexual relations which the Church is called to uphold before talking about sacramental marriage. Thus, Ruster’s approach to second marriages provides church and theology almost in passing with a recipe to adapt its ethical discourse to the contemporary relationship culture.

On the other hand, however, one gets the impression that once the link between natural and sacramental marriage has been broken, the theological discourse on marriage regains freshness and originality, especially when it comes to the specificity and uniqueness of its sacramental character. The fact that in today’s culture sacramental and indissoluble marriage “stands there, alone and naked” (ibid. 33) is for Ruster not a reason to despair and withdraw but rather to discover it afresh as a “configuration of God’s Kingdom” (84). Such sacramentality is a gift of the Kingdom and not the result of the spouses’ commitment and endeavour; but still, it is not beyond the realm of inner-worldly experience either. In this way indissolubility does not remain an abstract theological construct or juridical clause but penetrates into the couples’ consciousness and experience; as Ruster puts it in his English article: “a marriage can only be indissoluble if it IS indissoluble, that is, if during all crises and challenges both partners *know* that their union cannot be destroyed” (my emphasis). Such marriage would be indissoluble indeed – a foretaste of the Kingdom to which Jesus was referring marriage. For the time being, however, we have to live and to cope with divorce and second marriages. For that purpose, Ruster offers a radical and thought-provoking contribution.